

RO-1

United States Circuit Court of Appeals  
for the Ninth Circuit

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U.S. COURT OF APPEALS  
OCT 15 2019

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INITIAL

Tanawah M. Downing  
Petitioner

Case No.: 19-35803

D.C. No.: 4:19-CV-05055-TOR

v.

State of Washington  
Respondent

Request to Remand Case to the  
United States Supreme Court

Petitioner respectfully submits to the court for consideration, this Request to Remand Case to the United States Supreme Court.

Petitioner has submitted a Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254. This Writ of Habeas Corpus was summarily dismissed by the United States District Court for the Eastern District of Washington on May 14, 2019, by District Court Judge Thomas O. Rice. On September 19, 2019, Petitioner filed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit citing the intrinsic fraud and official misconduct committed by the judge and court as a result of the dismissal and breach of legal duty. The appeal was assigned case number 19-35803 by the Circuit Court of Appeals.

Petitioner respectfully requests that the United States Circuit Court of Appeals for the Ninth Circuit immediately remand this case to the United States Supreme Court for legal disposition and adjudication, in accordance with Article III, Section 2, of the United States Constitution, which states, "In all Cases in which a State shall be Party, the supreme Court shall have original Jurisdiction." In the current case, Tanawah M. Downing v. State of Washington, Case number: 4:19-CV-05055-TOR, a State (Washington) is clearly named Party, therefore, the ruling by Thomas O. Rice, United States District Court Judge for the Eastern District of Washington, is unconstitutional and as a result, improper

In further consideration of this matter, the court has identified the case Hurtado v. California, (1884) 110 US 516 as representative case law sufficiently able to deprive United States Citizens of fundamental Constitutional rights, in this case, an indictment by a Grand Jury before being held to answer for an infamous crime, in accordance with the 5<sup>TH</sup> Amendment to the United States Constitution. However, the ruling for Hurtado v. California, is in violation of Article III, Section 2. of the United States Constitution and therefore, unconstitutional, resulting in an illegal and nullified ruling.

State is named Party (California)

Hurtado v. California (1884) 110 U.S. 516, 74 S.Ct. 111

District Court Decision      Subsequent Supreme Ct. Ruling

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Since a State was named a Party (California), the federal district court did not have jurisdictional authority to rule on the petition, rendering the decision unconstitutional, as well as all subsequent decisions rendered by or predicated upon the first unconstitutional decision from the district court, which includes the subsequent Supreme Court ruling (74 S.Ct. 111). If the original ruling is unconstitutional, then obviously all subsequent rulings predicated upon it are also unconstitutional. The Bible, as well as the legal system utilizes the analogy of a "tree" to describe this situation, whereby it states, "If the tree is bad, it cannot produce good fruit," the root is bad and therefore, the "fruit" or progeny produced from it is also bad.

The court has also identified the case Gaines v. Washington, (1928) 277 U.S. 81 as representative case law governing this petition however, it also is in violation of Article III, Section 2. of the United States Constitution, based upon the same argument raised above for Hurtado v. California.

State is named Party (Washington)  
 ↙  
Gaines v. Washington (1928) 277 U.S. 81  
 ↘  
District Court Decision

In addition to the unconstitutionality of the ruling in Gaines v. Washington, whereby the ruling itself is in violation of the Constitution, due to the jurisdictional error, its ruling derives from or is progeny to the unconstitutional ruling in Hurtado v. California, thereby further nullifying it beyond simply the jurisdictional error.

As a result of the unconstitutionality of both Hurtado v. California and Gaines v. Washington and their nullification, no laws or rulings exist allowing for United States Citizens to be deprived of the fundamental Constitutional right of an indictment by a Grand Jury. The United States Supreme Court has NOT settled this matter and the State of Washington has an unconstitutional provision in its inferior constitution, to which the Petitioner is

① Fruit from the Poisonous Tree Doctrine

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being illegally and unlawfully held in violation of the United States Constitution and is therefore entitled to immediate relief from his unlawful confinement.

The great philosopher Nietzsche once said, "Those who fight monsters should see to it that in the process they don't become a monster." There are two vastly opposing legal doctrines at work in America at this time. Our system of government is founded upon the "Government of Laws" doctrine, which is Constitutionally based. It is built upon the theory that in order for laws to be legitimate, they must be considered just and equal. This is the egalitarianism approach, which our Constitution is framed upon. In order for all men to be equal, government and laws must first treat them equal.<sup>①</sup> This is the way that our system is designed to work, based upon a fixed set of laws or principles in which the courts and people adhere to, and to which every United States Citizen is accustomed to. The opposite of the Government of Laws doctrine is the "Legal Realism" doctrine, which is very much alive and at work here in America destroying our system of government and infringing on the rights of the People. Legal Realism of course is the theory that law is not based upon formal rules or principles, but instead upon judicial decisions deriving from their own social, political or public policy. This doctrine is not Constitutionally based and does not permit the fair and equal treatment of people. An excellent example of Legal Realism is the belief that a judge made ruling, such as Hurtado v. California, can alter the provisions and guarantees of the United States Constitution. When one attempts to combat the doctrine of Legal Realism, they often times utilize horrible judicial decisions, such as Plessy v. Ferguson (1896) and Dred Scott v. Sandford (1857), where the United States Supreme Court Chief Justice Taney stated in his assenting opinion that, "Blacks are not and were not intended to be included, under the word 'Citizen' in the Constitution. Blacks are so far inferior that they have no rights which the white man was bound to respect. Slaves are private property protected by the Constitution." I don't think that any United States Citizen today can help but feel shame and anger at those horrible words spoken by the highest

①The "innocent until proven guilty" theory demands equality between parties in the eyes of the Judge. Start with innocence therefore, you must also start with equality.



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member of the highest court of the land. There is no doubt that decision was made at a time of great conflict for our nation and clearly biased in sympathy of the South. The alteration of the Constitution in order to perpetuate slavery is not approved by God and should never be supported by good men. What has happened has happened, but to deny it would be a greater travesty. You see, a slave based system cherishes ignorance because that is the only security for its oppression. Slavery is the mortal antagonist to our democratic institution. Truth is the only thing in which people can be certain of, but truth doesn't cease to be truth simply because no one has the courage to speak up to defend it, or because someone else disagrees with it. Truth is never dependant upon the consensus of opinion. If a thousand people believe something to be foolish, yet one person know it to be true, it is still true. Truth can never be made a lie any more than a lie can be made truth. The truth is that slavery by any other name is still slavery. Simply retitling it "Justice" doesn't make it any less appalling. Changing it from a private institution to a state-run institution doesn't make it any more Constitutionally acceptable. It is still slavery and it is still a horrible injustice and wrong against humanity, regardless of what you call it, or how you disguise it.

While we are on the topic of truth, let's produce some more truth. In the case of Plessy v. Ferguson, there were eight of the nine United States Supreme Court Justices who all assented to the opinion that, "Black's are not people and therefore, not entitled to the protection of the United States Constitution" and "Blacks are so far inferior that they have no right which the white man was bound to follow." In this case, there was one single, brave, Supreme Court Justice who dissented with the rest stating, "Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect to civil rights, all citizens are equal before the Law." This brave Patriot was Justice John Marshal Harlan and this wasn't the only time that he found himself as a lone dissenter against every other Justice on the United States

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Supreme Court. One other such instance was in the case of Hurtado v. California. You see, the truth is that the same eight of the nine United States Supreme Court Justices who said that, "Slaves are private property protected by the Constitution," also said that United States Citizens are not protected by the provisions and guarantees of the 5<sup>TH</sup> Amendment. The truth is that the same eight of the nine United States Supreme Court Justices who said, "Blacks are not people," also said that the United States Constitution is not the supreme Law of the Land and does not enjoy legal superiority over conflicting provisions with state constitutions. The truth is that the same eight of the nine United States Supreme Court Justices who said, "Blacks are far inferior to the white man," also said that geographical discriminations are acceptable under our Constitution of government. The truth is that the same eight of the nine United States Supreme Court Justices who said, "Blacks are not and were not intended to be 'Citizens' in the Constitution," also said that states have the right to abridge the privileges and immunities of United States Citizens. The truth is that the same eight of the nine United States Supreme Court Justices who allowed their political interests for the advancement of an industry to cloud their good judgment, also put into practice a ruling intended to advance that industry under a different name, overstepping the Separation of Powers and legislating from the bench, in violation of the United States Constitution and the Oaths of the Offices for which they serve. George Washington voiced his concern about geographical discriminations in his farewell address, whereby he stated, "In contemplating the causes which may disturb our union, it occurs as a matter of serious concern, that any ground have been furnished for characterizing parties by Geographical discriminations, whence designing men may endeavor to excite a belief that there is a real difference of local interests and views." Forseeing the potential for dissention here in America, Mr. Washington advised vigilance against, "The first dawning of every attempt to alienate any portion of our country from the rest or to enfeeble the sacred ties which now link together the various parts." The bonds which unite us as one people are: origin, language, belief and laws. These are the 4 great ties that hold our whole society together. The Constitution

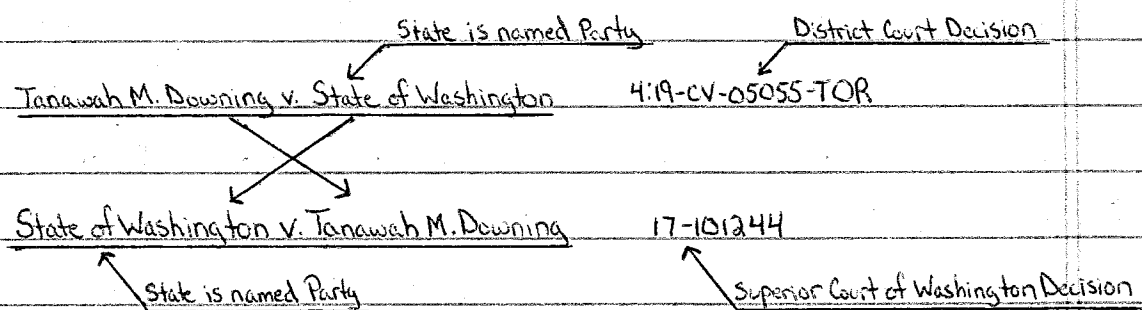
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binds the American people to goals that are incompatible with slavery. President Abraham Lincoln said, "It has long been a grave question whether any government, not too strong for the liberties of its people, can be strong enough to maintain its own existence in great emergencies." United States Supreme Court Justice Thurgood Marshall echoed this sentiment when he said, "Grave threats to liberty come in times of urgency, when Constitutional rights seem too extravagant to endure." The strongest bond which holds our nation together is the faith in the laws between us. This is not the United States of California or the United States of Washington. I didn't serve my country in the military fighting for Texas or Alabama, I was defending America, as I am now and as I will continue until such time as God or death has relieved me of my obligation. It is time now for the courts to do the same. Here is some more truth. The truth is that United States Citizens are governed by the Laws of the United States. The truth is that United States Citizens are guaranteed the rights secured by the United States Constitution. The truth is that no person can be held to answer for an infamous crime without an indictment by a Grand Jury. The truth is that one brave Supreme Court Justice did the right thing and stood for American principles despite fierce opposition at a time of great peril and his sage wisdom can be trusted today. God bless Justice John Marshal Harlan. The truth is that United States Citizens can believe and have faith in the United States Constitution, because the truth can always be trusted to fight our battles; the truth can always defend itself, as long as there is someone with the courage to speak it.

The role of government is to govern, but that role to govern must be fair. Government ceases to govern when it chooses to take sides; it is no longer governing, rather ruling. Every Citizen is equally entitled to fair and equal governing in the same way that every Citizen is entitled to equal protection of the Laws. Thomas Jefferson voiced this to us when he said, "Bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful, must be reasonable; that the will of the minority passes

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their equal rights, by which equal law must protect and to violate would be oppression." To understand the rationale behind Article III, Section 2. of the United States Constitution, which states, "In all Cases in which a State shall be Party, the supreme Court shall have original Jurisdiction," we can turn to the author himself and the words that he published in "The Federalist Papers" Circular Number 10, *New York Packet*, November 23, 1787, the article titled, "The Union as a Safeguard Against Domestic Faction and Insurrection." In the article, James Madison stated, "No man is allowed to be judge in his own cause, because his interest would certainly bias his judgment and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time." States cannot be and were never intended to be, both judge and party in the same cause, because of the bias, prejudice and partiality which would ultimately transpire as a result of it. States cannot be both an accuser and a judge, or else innocense will suffer. So in the same way and for the same reason why Tanawah M. Downing v. State of Washington, in the current civil action is unconstitutional, so also is State of Washington v. Tanawah M. Downing in the original criminal action is unconstitutional.



If  $1+2=3$  is unconstitutional then obviously  $2+1=3$  is also unconstitutional, simply rearranging the order of the Parties, does not magically change the representation of the Parties. Article III, Section 2. of the United States Constitution clearly states, "In all Cases in which a State shall be Party, the supreme Court shall have original Jurisdiction." As a result, both Tanawah M. Downing v. State of Washington and State of Washington v. Tanawah M. Downing are unconstitutional and therefore, illegal and the only court with jurisdictional authority



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to resolve both cases is the court which had jurisdictional authority in the cases to begin with, which is the United States Supreme Court, in accordance with Article III, Section 2, of the United States Constitution.

Our forefathers who framed our Constitution were simple, yet wise men. They weren't establishing complex principles or elaborate institutions to which only men of rich, or noble, or educated backgrounds could understand. You see, the forefathers were simply trying to create an accounting system which adequately and fairly reconciled the debt owed to society. If you choose to violate the law, you incur a DEBT that is OWED to society, to which you are CHARGED and called to ACCOUNT so that you may PAY the debt.

These are all simple accounting terms. The way that debt normally works is, if I want to purchase something from a store, a bill will first be generated, which I sign and accept. Then my account is charged and I incur a debt, to which I then have to pay. This is a very simple method for transactions to which anyone can understand. However, if the store charges a persons account without billing them first, that is called fraud. You must always bill before a charge is generated. How all of this applies to this case is that an indictment is called a "bill." So absent an indictment, people are being charged fraudulently because they are not being billed first. Understanding this now, any person who claims that a Bill of Indictment is not first needed before charging someones account, doesn't understand the basic principles and practices of the system they are dealing with. As a result of this very basic, fundamental element of our nations legal accounting system being ignored, millions of United States Citizens have incurred illegal and fraudulent debt. America must address this accounting flaw in its legal system.

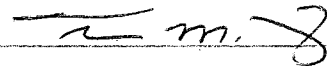
In accordance with Rule 23 of the USCS Rules of Civil Procedure and in light of all the aforementioned evidence, as well as the supporting evidence, Petitioner asks the United States Supreme Court to authorize the application of the CLASS Action device in this Habeas Corpus proceeding. Included within

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Addendum III, the court will find the names of only a couple of the hundreds of Petitioners who filed a Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254 between April 10, 2019 and September 2019 whos cases raised the exact same allegations and were illegally and unconstitutionally dismissed by the United States District Court, despite the jurisdictional error and who are all now entitled remanding of the case to the United States Supreme Court for legal and Constitutionally acceptable adjudication.

The last point that I would like to make is that, every single thing that I am advocating is consistent with God's divine attributes; release of prisoners, return of exiled captives, love in lieu of hate, compassion and not condemnation, forgiveness instead of vengeance, equity and not tyranny. I know what side I am on, so ask yourself, if I fight for God and you fight against me, who is it that you are fighting for?

Respectfully & Peacefully  
a Servant of Justice,



Tanawah M. Downing  
Petitioner, Pro Se

## UNITED STATES DISTRICT COURT

for the  
Eastern District of WashingtonDistrict Court rendered  
Decision

TANAWAH M. DOWNING,

Plaintiff

v.

Civil Action No. 4:19-CV-5055-TOR

State is named Party

STATE OF WASHINGTON,

Defendant

## JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☐ the plaintiff (name) \_\_\_\_\_ recover from the  
defendant (name) \_\_\_\_\_ the amount of  
\_\_\_\_\_ dollars (\$ \_\_\_\_\_), which includes prejudgment  
interest at the rate of \_\_\_\_\_ %, plus post judgment interest at the rate of \_\_\_\_\_ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) \_\_\_\_\_  
\_\_\_\_\_ recover costs from the plaintiff (name) \_\_\_\_\_

☒ other: Petitioner's Petition is DISMISSED.

This action was (check one):

☐ tried by a jury with Judge \_\_\_\_\_ presiding, and the jury has  
rendered a verdict.

☐ tried by Judge \_\_\_\_\_ without a jury and the above decision  
was reached.

☒ decided by Judge Thomas O. Rice pursuant to Rule 4, Rules Governing  
Section 2254 Cases in the United States District Courts.

Date: May 14, 2019

CLERK OF COURT

SEAN F. McAVOY

s/ Linda L. Hansen

(By) Deputy Clerk

Linda L. Hansen

E-Document



Office of the Clerk  
United States Court of Appeals for the Ninth Circuit  
Post Office Box 193939  
San Francisco, California 94119-3939  
415-355-8000

Molly C. Dwyer  
Clerk of Court

September 20, 2019

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No.:	19-35803
D.C. No.:	4:19-cv-05055-TOR
Short Title:	Tanawah Downing v. State of Washington

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Dear Appellant

The Clerk's Office of the United States Court of Appeals for the Ninth Circuit has received a copy of your notice of appeal and/or request for a certificate of appealability.

**A briefing schedule will not be set until the court determines whether a certificate of appealability should issue.**

Absent an emergency, all subsequent filings in this matter will be referred to the panel assigned to consider whether or not to grant the certificate of appealability.

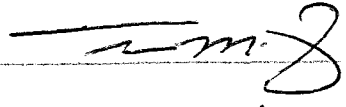


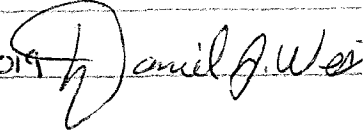
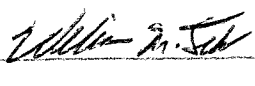

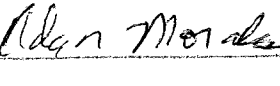
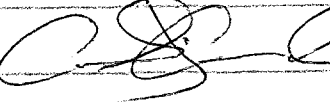
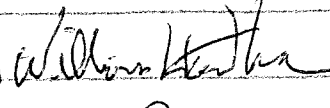
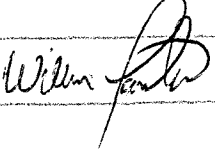
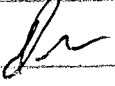
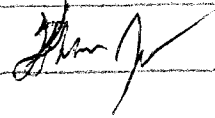
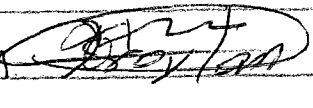
All subsequent letters and requests for information regarding this matter will be added to your file to be considered at the same time the cause is brought before the court.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.



## Addendum III - Listing of Co-Petitioners

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<u>NAME</u>	<u>Case No</u>	<u>Case</u>	<u>DATE JGMNT</u>	<u>Signature</u>
① TANAWAH M. Downing	4:19-CV-05055-TOR	<u>Downing v. Washington</u>	5/14/2019	
② NATHAN B. NAVE	2:19-CV-00155-TOR	<u>NAVE V. STATE OF WASHINGTON</u>	5/14/2019	
③ Robert Gene DaValle	4:14-CV-05061-TOR	<u>DaValle v. State of Washington</u>	5/14/2019	
④ Daniel J. West	2:19-CV-00125-SAB	<u>West v. State of Washington</u>	7/5/2019	
⑤ William M. Julian	2:19-CV-00176-SAB	<u>JULIAN V STATE OF WASHINGTON</u>	7/11/19	
⑥ Douglas R. Duenwald	2:19-CV-00584-RAT	<u>Duenwald v. State of Washington</u>	7/9/2019	
⑦ Alan Morales	2:19-CV-00948-RSM	<u>Morales v. State of Washington</u>	7/24/2019	
⑧ Carlos J. Camacho	1:19-CV-03131-RMP	<u>Camacho v. State of Washington</u>	7/29/2019	
⑨ William D. Hawthorne	2:19-CV-00656-RSM	<u>Hawthorne v. State of Washington</u>	7/24/2019	
⑩ William M. Carothers	4:19-CV-05089-SAB	<u>Carothers v. State of Washington</u>	7/5/2019	
⑪ Ira L. West	1:19-CV-03124-SMJ	<u>West v. State of Washington</u>	7/22/2019	
⑫ Thomas M. Jones	2:19-CV-00641-JLR	<u>Jones v. State of Washington</u>	7/24/2019	
⑬ Freylan Z. Gonzalez	4:19-CV-05155-SMJ	<u>Gonzalez v. State of Washington</u>	7/11/2019	

CP-2

NAME

Case No.

Case

Date JGMNT

Signature

⑭ Eric Harris      2:19-cv-00160-SMJ      Harris v. State of Washington      7/9/2019      Eric Harris